Appendix

Statutes and Regulations Involved

Statutes

Section 501 of the Revenue Act of 1932 contains the following provisions:

Sec. 501 Imposition of Tax.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift.

. . . . . .

(c) The tax shall not apply to a transfer of property in trust where the power to revest in the donor title to such property is vested in the donor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such property or the income therefrom, but the relinquishment or termination of such power (other than by the donor's death) shall be considered to be a transfer by the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift.

Sections 451 and 452 of the Revenue Act of 1942 read as follows:

Sec. 451. Gifts to which Amendments Applicable.

Except as otherwise expressly provided, the amendments made by this part shall be applicable only with respect to gifts made in the calendar year 1943, and succeeding calendar years.

Sec. 452. Powers of Appointment.

(a) GENERAL RULE.—Section 1000 (relating to imposition of gift tax) is amended by inserting at the end thereof the following new subsection:

"(c) POWERS OF APPOINTMENT.—An exercise or release of a power of appointment shall be deemed a transfer of property by the individual possessing such power. For the purposes of this subsection the term 'power of appointment' means any power to appoint exercisable by an individual either alone or in conjunction with any person, except—

"(1) a power to appoint within a class which does not include any others than the spouse of such individual, spouse of the creator of the power, descendants of such individual or his spouse, descendants (other than such individual) of the creator of the power or his spouse, spouses of such descendants, donees described in section 1004(a)(2), and donees described in section 1004(a)(2), and donees described in section 1004(b). As used in this paragraph, the term 'descendant' includes adopted and illegitimate descendants, and the term 'spouse' includes former spouse; and

"(2) a power to appoint within a restricted class if such individual did not receive any beneficial interest, vested or contingent, in the property from the creator of the power or thereafter acquire any such interest, and if the power is not exercisable to any extent for the benefit of such individual, his estate, his creditors, or the creditors of his estate.

If a power to appoint is exercised by creating another power to appoint, such first power shall not be considered excepted under paragraph (1) or (2) from the definition of power of appointment to the extent of the value of the property subject to such second power to

appoint. For the purposes of the preceding sentence the value of the property subject to such second power to appoint shall be its value unreduced by any precedent or subsequent interest not subject to such power to appoint."

(b) POWERS WITH RESPECT TO WHICH AMENDMENTS NOT APPLICABLE.—

(1) The amendments made by this section shall not apply with respect to a power to appoint, created on or before the date of enactment of this Act, which is other than a power exercisable in favor of the donee of the power, his estate, his creditors, or the creditors of his estate, unless such power is exercised after the date of enactment of this Act.

(2) The amendments made by this section shall not become applicable with respect to a power to appoint created on or before the date of enactment of this Act, which is exercisable in favor of the donee of the power, his estate, his creditors, or the creditors of his estate, if at such date the donee of such power is under a legal disability to release such power until six months after the termination of such legal disability. For the purposes of the preceding sentence, an individual in the military or naval forces of the United States shall, until the termination of the present war, be considered under a legal disability to release a power to appoint.

(c) Release on or Before January 1, 1943.[4]—

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[4] The time stated in this statute has been extended five times: To July 1, 1943, by the Act of December 17, 1942, c. 740, 56 Stat. 1054; to March 1, 1944, by § 10 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126; to January 1, 1945, by § 505 of the Revenue Act of 1943, c. 63, 58 Stat. 21; to July 1, 1945, by the Act of December 20, 1944, c. 616, 58 Stat. 830; and to July 1, 1946, by the Act of June 29, 1945, Public Law 95, 75th Congress. The full text of § 452(c) as most recently amended is set out on p. 13, above.

(1) A release of a power to appoint before January 1, 1943, shall not be deemed a transfer of property by the individual possessing such power.

(2) This subsection shall apply to all calendar years prior to 1943.

Section 501 of the Revenue Act of 1943 reads as follows:

Sec. 501. Valuation of Unlisted Stock and Securities For Estate Tax Purposes.

Section 811 (relating to gross estate) is amended (a) by striking out "(k)" at the beginning of subsection (k) and inserting in lieu thereof "(l)", and (b) by inserting after subsection (j) the following:

"(k) VALUATION OF UNLISTED STOCK AND SECURITIES.—In the case of stock and securities of a corporation the value of which by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange."

Section 502(a) of the Revenue Act of 1943 reads as follows:

Sec. 502. Certain Discretionary Trusts in Connection with Gift Tax.

(a) AMENDMENT OF THE INTERNAL REVENUE CODE.—Section 1000 of the Internal Revenue Code (imposing the gift tax) is amended by inserting at the end thereof the following:

"(e) CERTAIN DISCRETIONARY TRUSTS.—In the case of property in a trust created prior to January 1, 1939, if on and after January 1, 1939, no power to revest title to such property in the grantor could be exercised either by the grantor alone, or by the grantor in conjunction with any other person not having a substantial adverse interest in the disposition of such property or the income therefrom, then a relinquishment by the grantor on or after January 1, 1940, and prior to January 1, 1945, of power or control with respect to the distribution of such property or the income therefrom by an exercise or other termination of such power or control shall not be deemed a transfer of property for the purposes of this chapter. If such property was transferred in trust, the grantor not retaining such power to revest title to such property in the grantor was relinquished, while a law was in effect imposing a tax upon the transfer of property by gift, this subsection shall apply only if (1) gift tax was paid with respect to such transfer or relinquishment, and not credited or refunded or a gift tax return was made within the time prescribed on account of such transfer or relinquishment but no gift tax was paid with respect to such transfer or relinquishment because of the deductions and exclusions claimed on such return, and (2) the grantor consents, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, for all purposes of this chapter to treat such transfer or relinquishment in the calendar year in which effected, and for all periods thereafter, as having been a transfer of property subject to tax under this chapter. This subsection shall not apply to any payment or other disposition of income occurring prior to the termination of power or

control with respect to the future disposition of income from the trust property."

COMMITTEE REPORTS

House Report No. 1079, 78th Congress, 2d Session, pp. 68-69, with respect to § 1000(e) of the Internal Revenue Code, added by § 502(a) of the Revenue Act of 1943, reads as follows:

> The first [amendment made by the Conference Committee] provides that the present rule whereby gift tax is imposed upon the payment of income to a beneficiary or upon some other disposition of the income is not affected as long as the grantor retains a power over future income from the trust property. For example, if a grantor created a trust in 1930, reserving a power to change the beneficiaries and their proportionate interests with respect to principal and income, but without retaining a power to revest the property in himself, and terminates his reserved power in 1944, so that he is no longer able to change the beneficiaries or their respective interests, the interim payment of income to any beneficiary or other surrender by the grantor of control over such income prior to such termination is nevertheless a taxable gift and to be treated accordingly. The same result follows if a similar trust was created while a gift-tax law was in effect and the grantor, prior to January 1, 1945, terminates the aforesaid reserved power, consenting to treat the original transfer in trust in the calendar year in which effected and for all periods thereafter as having been a transfer subject to gift tax.

The same language appears in the Commissioner's regulations under § 1000(e). T. D. 5366, 1944 Cum. Bull. 583, 585.

REGULATIONS

Regulations 108, relating to the gift tax, contains the following material in § 86.2(b) as most recently amended by T.D. 5471, Int. Rev. Bull., Sept. 11, 1945, p. 10:

(b). *Transfers under power of appointment.*—The exercise of a power of appointment after June 6, 1932, and before January 1, 1943, constitutes a gift by the individual possessing the power if the power is exercisable in favor of any person or persons or objects in whose favor the appointment may be made, if it is exercisable in favor of the individual possessing the power, his estate, his creditors, or the creditors of his estate. The release before July 1, 1946, of a power to appoint created on or before October 21, 1942, the date of enactment of the Revenue Act of 1942, is excepted from the application of the tax by reason of the express provisions of section 452(c) of the Revenue Act of 1942, as amended by Public Law 95 (79th Congress), approved June 29, 1945. . . . Section 452(c) of the Revenue Act of 1942, however, does not apply to any release of a power reserved directly or indirectly, by a donor upon a transfer, as distinguished from a donee of a power of appointment who releases the power which he had received from another person. . . .

The term "power of appointment" includes any power received by the appointor from another person which is in substance and effect a power to appoint regardless of the nomenclature used in creating the power and local property law connotations. For example, if a settlor transfers property in trust for the life of his wife with a power in the wife to appropriate or consume the principal of the trust, the wife has a power of appointment and the release of such a

power constitutes a taxable transfer. On the other hand, if, for example, a power of appointment with respect to the remainder, exercisable by the life tenant, is subject to the consent of the trustee who is a disinterested third party not receiving any beneficial interest upon such transfer, upon the exercise or release of the power by the life tenant no part of the gift of such remainder is attributable to the trustee personally. Similarly, if property is transferred in trust by a grantor reserving the power to alter, amend, revoke, or terminate the trust with the consent of the trustee who is a disinterested party not receiving any beneficial interest upon the transfer, the exercise or relinquishment of such power by the grantor with the consent of such trustee is not a taxable transfer by the latter. Ordinarily, powers of management with respect to property in trust, such as the determination of whether distributions shall be made annually or quarterly, the making of investments and reinvestments, or the determination of items of income or principal under recognized rules of accounting, are not powers of appointment over property under section 1000(c).

A power to appoint is exercised where the property subject thereto is appointed to the taker in default of appointment, regardless of whether or not the appointed interest and the interest in default of appointment are identical, and regardless of whether or not the appointee renounces any right to take under the appointment. For the purposes of section 1000(c), a release of a power of appointment need not be express or formal in character. For example, the failure to exercise a power of appointment within a specified time, resulting in the termination of the power of appointment, is taxable if the other conditions imposed by section 1000(c) are present.